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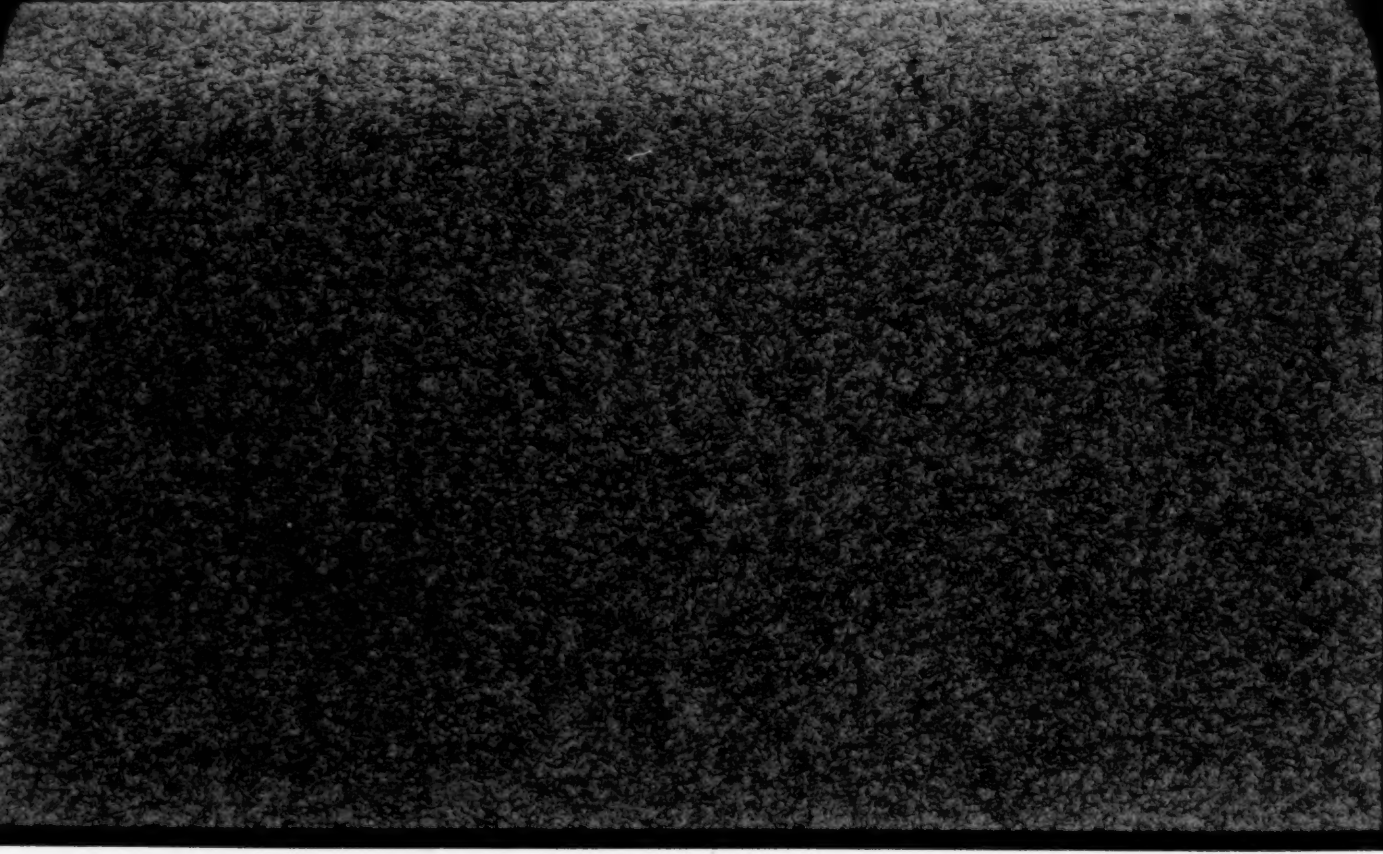

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 705

MART M. MONAGHAN,

Appellant,

vs.

MAUDE D. ARMATAGE, HENRY H. BANK, EDWARD A. CHALGREN, FRANCIS A. GROSS, PAUL G. JOHNSON, MARVIN L. KLINE, H. G. KNIGHT, THOMAS F. McCARTHY, A. A. McRAE, JENS CHRISTENSEN, ALFRED F. PILLSBURY, WALTER P. QUIST, CLINTON L. STACY, JOSEPH A. WOJCIAK AND WASHINGTON YALE, AND MINNEAPOLIS-ST. PAUL METROPOLITAN AIRPORTS COMMISSION,

Appellees

COUNTER STATEMENT OF APPELLANT AS TO JURISDICTION

Appellees misconceive the whole purport of appellant's suit. This is not a suit by a city against a state. The City of Minneapolis is not a party to this suit. Appellant is a resident tax-payer, and brings this suit for himself and the other resident tax-payers against the members of the Minneapolis Park Board. The private property involved is the private property of appellant, in which he owns a vested

interest as a resident citizen of the city; and the private property of the other resident citizens in which they own a like vested interest.

Hazzard v. *Duff* (194) 287 Ky. 427.

> "Taxpayers of the municipality became the Owners of the business thus authorized to be conducted"—spoken of a brick building held by the court to belong to the city in its private or proprietary capacity, and which was held to be subject to execution on a judgment against the city.

The basis of jurisdiction of this court is that Minnesota Laws of 1943, Chapter 500, is claimed to be repugnant to the Federal Constitution but nevertheless was upheld as a valid law by the final judgment of the highest court of Minnesota. It is repugnant to the Federal Constitution because it takes vested private property from appellant and other resident taxpayers of Minneapolis without due process of law, and denies appellant and the other taxpayers the equal protection of the laws. Incidentally it takes the vested private property of the City of Minneapolis, which that city owns in its proprietary capacity, in like manner.

The city owns the property as trustee for the use and benefit of appellant and the other taxpayers. The city acquired and paid for the property in 1928, under authorization of Laws of Minnesota 1927, Chapter 62. It acquired it for the purpose of establishing and maintaining a municipal flying field, before there was any thought, much less any legislation, that such purpose was a governmental purpose, or any other than a private or proprietary purpose, as it is indeed today in the great majority of the states. The city was expressly authorized by Chap. 62, L. 1927, to lease portions of its private property so acquired "to the State of Minnesota or any branch of the state government for public purposes." The city became the vested owner of said

private property, as trustee for the use and benefit of appellant and of its other resident citizens. Neither the appellant and the other resident taxpayers, nor the city can be divested of such property without due process of law or without the equal protection of the laws.

We know of no previous decisions of this court holding that private property of resident taxpayers, or their vested private property rights, which they bought and paid for with their own money, can be so taken; or holding that they cannot invoke the protection of the due process and equal protection clauses of the 14th Amendment.

Neither *Hunter* v. *City of Pittsburgh, City of Trenton* v. *State of New Jersey,* nor *Williams* v. *Mayor of Baltimore,* cited in appellees' brief, so hold. They were all cases in which the city or the mayor of the city in his official capacity, were parties, and in which the individual taxpayers were not parties.

The cases of *Coleman* v. *Miller,* and *Patterson* v. *Stanolind Oil & Gas Company,* so cited, have no bearing at all on the question of taxpayers and their rights.

Hunter v. *City of Pittsburgh,* 207 U. S. 161, 52 L. Ed. 151 had reference only to governmentally owned property. It expressly declined to pass upon the right of a city to constitutional protection as to its privately owned property or that owned in its proprietary capacity. Significantly the *Hunter* case did not touch at all on a taxpayers interest in private or proprietary property of a city. *City of Trenton* v. *New Jersey,* 262 U. S. 182-67 L. Ed. 937 held that the state under its police power might impose a license fee as specified in the act; and it is elementary that if a state acts properly under its police power it is not controlled by any constitutional provision.

Justice Butler seems to base his decision on the case of *Hunter* v. *Pittsburgh,* 207 U. S. 161, which expressly de-

clined to discuss or rule upon the question of constitutional protection for privately owned property of a city.

He seems to rely also on *Pawhuska* v. *Pawhuska Oil Co.*, 250 U. S. 394, in which latter case the syllabus reads in part: "As respects grants to municipalities of governmental authority • • • the power of the states is not restrained by the contract clause of the constitution" and, in the opinion it is said:

> "It is not contended—nor could it well be—that any private right of the city was infringed."

With all due respect to Justice Butler, it seems that he incorrectly interpreted the cases of *Hunter* v. *Pittsburgh* (*supra*) and *Pawhuska* v. *Pawhuska Oil Co.* (*supra*), for he cites them as supporting propositions of law which they did not pass upon.

The *Trenton* case, furthermore, does not touch at all on a taxpayer's interest in private or proprietary property of a city.

The case of *Williams* v. *Mayor of Baltimore*, 289 U. S. 36, 77 L. Ed. 1015 passes upon no question involving the rights of a taxpayer in municipally owned private property as distinguished from governmental property. That case was concerned solely with a governmental function and a governmental necessity of relieving the burdens of a railroad "which supplied the only rail service to Annapolis, the capital of the state".

The case of *Patterson* v. *Stanolind Oil & Gas Co.*, 305 U. S. 376, 83 L. Ed. 231, holding that if appellant fails to raise a substantial question in the light of previous decisions, the appeal will be dismissed, has otherwise no bearing whatever on the propositions in the instant case. It held that the owner-lessor of the mineral rights in a tract of land, on which was a producing oil well, was not deprived of property rights in violation of the 14th Amend-

ment, nor were his contractual rights impaired by an order made under the Well Spacing Act of Oklahoma, and, that the questions having been decided many times before, the appellant did not raise a substantial Federal Question.

Likewise entirely inapplicable is the case of *Coleman* v. *Miller*, 207 U. S. 433, 83 L. Ed. 1385. It is a case in which this court refused to dismiss a writ of certiorari (437) on the ground that twenty senators of Kansas, who voted against the ratification of the Child Labor Amendment, had "no standing to seek to have the judgment of the state court reviewed" * * * "We find the cases cited in support of the contention, that petitioners lack an adequate interest to invoke our jurisdiction to review, to be inapplicable * * * we think these senators have a plain, direct and adequate interest in maintaining the effectiveness of their vote."

II

Appellant, suing as a resident taxpayer, injured and affected adversely and subjected to an unwarranted and illegal burden, and deprived of his vested property, who has suffered by the decision of the state court in favor of the validity of the statute, has, as such, sufficient personal, legal interest in the question of Federal constitutionality of Minnesota Laws 1943, Chapter 500, to warrant his invoking the provisions of the Federal Constitution. In addition to suing in his own right he sues for the benefit of all the other resident taxpayers of Minneapolis, and, as such, has a right to invoke the 14th Amendment of the Federal Constitution.

Crampton v. *Labriskie*, 101 U. S. 601 (608-609). "The present suit, therefore, is brought by other taxpayers of the county * * *"

> "Of the right of resident taxpayers to invoke the interposition of a court of equity to prevent an illegal

> disposition of the moneys of the county or the illegal creation of a debt which they in common with other property-holders of the county may otherwise be compelled to pay, there is at this day no serious question."

Of the cases cited by appellees in supoprt of their contention that a taxpayer, as such, has no legal interest in the questions raised, it is interesting to note the statement made in *Coleman* v. *Miller,* 307 U. S. 433 (445):

> "While one who asserts the mere right of a citizen and taxpayer of the United States to complain of the alleged invalid outlay of public moneys has no standing to invoke the jurisdiction of the federal courts (Frothingham v. Mellon, 262 U. S. 447) the court has sustained the more immediate and substantial right of a resident taxpayer to invoke the interposition of a court of equity to enjoin an illegal use of moneys by a municipal corporation. Crampton v. Zabriskie 101 U. S. 601, Frothingham v. Mellon, supra. In Heim v. McCall 239 U. S. 175 we took jurisdiction on a writ of error sued out by a property owner and taxpayer, who had been given standing in the state court, for the purpose of reviewing its decision sustaining the validity under the Federal Constitution of a state statute as applied to contracts for the construction of public works in the City of New York, the enforcement of which was alleged to involve irreparable loss to the city and hence to be inimical to the interests of the taxpayer."

In *Stewart* v. *Kansas City,* 239 U. S. 14, 60 L. Ed. 120, another case cited by appellees to that point, this court does not hold that a taxpayer has no personal interest in the litigation but says (16):

> "Plaintiff in error is not impleaded as a taxpayer nor does he defend as such. He is sued as a county officer and defends by virtue of the exercise of his functions as a county officer * * * He certainly has no personal interest in the litigation."

The case of *Standard Stock Food Co.* v. *Wright*, 225 U. S. 540, simply holds one who would strike down a statute as violative of the Federal Constitution must show that the unconstitutional feature of the law injures him and so operates to deprive him of rights protected by the Federal Constitution. And that is exactly what the appellant in this case has done. One unconstitutional feature is the taking without compensation rentals of $16,800.00 a year to plaintiff's personal damage. Another is the imposition of the burden of paying of to-wit, $367,000.00 in bonds and interest which plaintiff and his fellow taxpayers must bear, and which, but for the passage of Chapter 500, Minnesota Laws 1943, they would not have to pay.

The case of *Roberts & Schaffer Co.* v. *Emmerson*, 271 U. S. 50, merely reiterates the proposition that a corporation challenging a law on the ground that it violates the equal protection clause cannot rely on theoretical inequalities, or, such as do not affect it but must show that it is itself affected unfavorably by the discriminations of which it complains.

> "The plaintiff cannot complain that the tax is measured by authorized, instead of issued, capital stock, because all of its authorized capital stock has been issued."

The case of *Columbus & Greenville Ry.* v. *Miller*, 283 U. S. 96, reiterates that a state official, attacking, as such official, a statute of his state, has no such personal interest as will warrant his invoking the Fourteenth Amendment.

> "The constitutional guaranty does not extend to the mere interest of an official, as such, who has not been deprived of his property without due process of law or denied the equal protection of the laws."

The case of *Coleman* v. *Miller*, 307 U. S. 433, we have already commented on at length and it seems to favor us entirely.

III

As to the suit being moot, it is only when any adjudication which this court might make would be ineffectual for any purpose that a cause becomes moot; when there is nothing upon which any order of the court can operate; when the thing sought to be prohibited has been done and cannot be undone by any order of this court.

The appellees themselves have furnished the complete answer to their contention. The Minneapolis-St. Paul Metropolitan Airports Commission intervened in this suit, and made itself a party to the suit. It has joined with the other defendants in this very appeal, and is itself a party to this appeal.

The thing sought to be prohibited was the transfer of the use, occupation, rentals, controls, etc., of the Minneapolis Municipal Airport to the Minneapolis-St. Paul Metropolitan Airports Commission. That has been done. But the transfer having been made to one of the parties to this appeal, this court can by its order compel the transferee to re-transfer the property back to its original owner.

It is conceded that this court is not disposed to decide moot questions, or abstract propositions.

The case of *Tyler* v. *Judges,* 179 U. S. 405, 45 L. Ed. 252, cited by appellees makes that declaration, but makes no comment pertinent at all to the instant case, on what constitutes a moot question.

The case of *Jones* v. *Montague,* 194 U. S. 147, 48 L. Ed. 913, does not aid the appellees, because the transferee of the airport, its control, use and rentals has made itself a party to this suit and is a party to this appeal, and this court may order it to reconvey the airport, etc., back to the Minneapolis Park Board. That suit was one in prohibition, restraining and enjoining the defendants "as board of state canvassers" from canvassing the election returns, declar-

ing the result, and giving certificates to the parties found to be elected. The opinion, in stating the facts, recites:

> "After answer by defendants the writ of prohibition was denied by the Circuit Court and the petition dismissed. The dismissal was based on a want of jurisdiction, whereupon the petitioners brought the case on error directly to this court. A motion has here been made to dismiss the writ of error on the ground that everything sought to be prohibited has already been done, AND THAT THERE IS NOTHING UPON WHICH ANY ORDER OF THE COURT CAN OPERATE."

The opinion, in deciding the case, recites:

> "But * * * the thing sought to be prohibited has been done AND CANNOT BE UNDONE BY ANY ORDER OF COURT. The canvass has been made, certificates of election have been issued, the House of Representatives * * * has admitted the parties holding the certificates to seats in that body, and any adjudication which this court might make would be only an ineffectual decision of the question whether or not these petitioners were wronged by what has been fully accomplished."

In the case at bar this court may make its adjudication that appellant has been wronged, and the court may right that wrong and compel the Minneapolis-St. Paul Metropolitan Airports Commission, a party to this appeal, to retransfer to the Minneapolis Park Board the use, occupation, rentals and control of the Minneapolis Municipal Airport a. k. a. the Wold-Chamberlain field.

The case of *In re Lincoln*, 202 U. S. 178, 50 L. Ed. 984 was one in which the petitioner's term of imprisonment had expired, and the court was powerless to do anything.

The case of *Chandler* v. *Wise*, 307 U. S. 474, held that certiorari should be dismissed because: "After the Governor of Kentucky had forwarded the certification of the ratification of the amendment to the Secretary of the United States

there was no longer a controversy susceptible of judicial determination".

The case of *St. Pierre* v. *U. S.*, 319 U. S. 41, was another instance of the sentence of the petitioner having been fully served, and any order this court might make would be ineffectual for any purpose.

IV

As to appellees' claim that the judgment of the Minnesota Supreme Court is not a final judgment, we have but to cite the case of *North Carolina R. R.* v. *Story*, 268 U. S. 288. Syllabus—"A judgment of a state supreme court affirming the refusal of a lower court to continue a temporary restraining order and to grant a permanent injunction on the petition and answer, and leaving nothing for the lower court to do but dismiss the petition, *held* a final judgment and reviewable by certiorari under Jud. Code Sec. 237, as amended September 6, 1916."

The case of *Vicksburg Water Works Co.* v. *Yazoo & Mississippi Valley R. Co.*, 220 U. S. 601, cited by appellees, was evidently a case in which there had been a remand for further proceedings and there was still another appeal to be taken to the Supreme Court of the state in order to make a "final judgment" from which a writ of error would lie. As to the right to a review as to what is included in the term "suit" and as to what constitutes a final judgment, see *Weston* v. *Charleston*, 2 Peters 449.

General Argument

Questions cannot be said to be unsubstantial which affect every city, large and small, throughout the nation; and, affect the millions of dollars worth of property which they own in their proprietary capacity, and which they own as trustees of their resident taxpayers; and which affect

private property rights, legal and equitable, of millions of the citizens of the United States.

The very pronounced language of the Minnesota Supreme Court, answering one question in this case by citation of *City of Trenton* v. *State of New Jersey*, 262 U. S. 182, and *State* v. *County Board*, 126 Minn. 209, cannot be overlooked by any interested citizen living in a municipal corporation in any state of this union. The syllabus of the *Trenton* case sufficiently expresses the effect of the decision:

> "The distinction between a municipality as an agent of the State for governmental purposes, and as an organization to care for local needs in a private or proprietary capacity, affords no ground for the application of those constitutional restraints against a State in favor of its own municipality."

At page 186 of the *Trenton* case, the court cites *Hunter* v. *Pittsburgh*, 207 U. S. 161, 178, 179, as authority for the principle announced in that case. Reference to *Hunter* v. *Pittsburgh* will show that the question upon which it was cited as an authority was not before the court in that case—that is, the constitutional protection afforded the City of Allegheny if it held property in its proprietary capacity. The court was careful to say that such question was not before the court and that the record did not disclose that the City of Allegheny held property in its proprietary capacity, and yet *Hunter* v. *Pittsburgh* was cited as the basic authority for the decision in the *Trenton* case.

The *Trenton* case could have been decided and disposed of upon other principles. The *Trenton* case involved a law of the State of New Jersey relative to taxation, and the only claim for constitutional protection was that the City of Trenton was being denied the equal protection of the law. Yet, the whole subject was one of taxation, and governmental in character, and did not compel a decision well nigh permanently making municipal corporations an exception

to the persons protected by the due process clause of the Fourteenth Amendment to the Constitution of the United States; and that is just what the declaration in the *Trenton* case is. It makes an exception of municipal corporations to the persons protected by the Fourteenth Amendment.

We feel it is also necessary to say that the decision of the Minnesota court here appealed from cites as authority in its own state only *State* v. *County Board,* 126 Minn. 209, which case relates to a decision of the Minnesota court in a matter involving public education, always a governmental matter and never involving the holding of property in a proprietary capacity—that is, so far as I can readily determine. I do not know of a case where a school district secures revenues and holds property in its proprietary capacity.

A very substantial percentage of the population of the United States resides in the big cities, and if this court now again unnecessarily repeats what we consider the erratic conclusions of the *Trenton* case, then again the door of constitutional protection is slammed in their faces.

We do not feel that this case required the answer given by the lower court, nor that this court should, without discussion and thorough consideration, give any brief answer based upon the *Trenton* case. Feeling so seriously about it, we will briefly review the problem as it has developed from the beginning.

While we may cite authority and court decisions relative to early English history and developments from the Magna Charta to the adoption of our federal constitutional provisions, we think it is sufficient to say that the conflict in England was fundamentally one of Parliament and the people against the abuses of the Crown, and that the phrase, "due process of law," there differently expressed but followed into and made a part of state constitutions, was that if the people were to be deprived of their property, they pre-

ferred that be done pursuant to act of Parliament and what was common law—"due process." In other words, if they had to lose their rights and privileges and property, they preferred to have it done by legislation rather than by decree; and yet ownership of property was very closely followed and protected in British common law.

The revolutions of 1640 and 1680, best interpreted by Blackstone, indicate that there was more in the phrase, "due process of law," than a mere desire to have an abuse committed by Parliament rather than the King in Council. We believe as good a summary of the general principles of what was property and how it was protected in private hands and in public hands, as can be found, is Daniel Webster's argument to the court in the *Dartmouth College* case. We believe the *Dartmouth College* case was decided the way it was because the only provision of the Constitution of the United States that could be easily applied to protect the trustees of Dartmouth College was that of Section 10, Article 1, of the Constitution of the United States, that no state shall "pass any bill * * * or law impairing the obligations of contracts * * *." The Supreme Court of the United States did not have before it in such case the broad provisions of the Fourteenth Amendment subsequently adopted. The court arrived at the conclusion that the territorial grant to the trustees of Dartmouth College took on the form of contract, and therefore the act of the New Hampshire legislature had the effect of impairing this contract; and yet, in discussing the case, Daniel Webster covered the entire field, including discussion of the case of *Terrett* v. *Taylor*, which outlined the distinctions between private corporations and public corporations, but announced, without question, that where public corporations held property that they had paid for and which was held in their proprietary capacity, the legislature must compen-

sate the municipal corporations, the people who had expended the money and who owned the property.

The Fifth Amendment to the Constitution of the United States was being interpreted, and we think properly, not to apply to the activities of the state, but only to the activities of the general government; but, by the adoption of the Fourteenth Amendment to the Constitution of the United States, the same principles as involved in the Fifth Amendment were specifically applied to the actions of the state, and by said amendment it was provided that no state shall "deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law." For many years after the Fourteenth Amendment it was narrowly viewed, but in 1882 Roscoe Conklin pointed out that the Fourteenth Amendment was much more than a protection to the colored man and his property—that it applied to and covered all abuses committed by the states. He pointed out that at the time of the adoption of the Fourteenth Amendment there were innumerable complaints before the Congress of the United States against abuses within the states, and we emphasize that Article 14 includes no exceptions to the protection it affords.

We do not need to cite authority that a municipal corporation is a person, that it may own and hold property, and, in many cases, it does.

The charter of the City of Minneapolis—Section 1 of Chapter I, provides as follows:

> "All that district of country in the County of Hennepin and State of Minnesota, contained within the limits and boundaries hereinafter described, shall be a city by the name of Minneapolis, and all the people now inhabiting and those who shall hereafter inhabit the said district shall be a Municipal Corporation by the name of the 'City of Minneapolis,' and by that name may sue

and be sued, plead and be impleaded, in any court; make and use a common seal and alter it at pleasure; take and hold, lease and convey all such real, personal and mixed property as the purposes of the corporation may require, or the transaction or exigencies of the business may render convenient within or without the limits of such district; shall be capable of contracting and being contracted with, and shall have all the general powers possessed by Municipal Corporations at common law, and in addition thereto shall possess all powers hereinafter specifically granted, and all the authorities thereof shall have perpetual succession."

We are not here seeking to convince this court that every comparatively trivial claimed deprivation of property should be permitted to encumber the calendar of this court, but we respectfully insist that there may come a time when the people of the great city of New York, owning and holding property, may be deprived of this property held by the City of New York in its proprietary capacity. The legislature may take away from the people of the City of New York property that they have paid for, that they own, and that they should not be deprived of.

To emphasize the attitude of some quite distinguished jurists in state courts upon this subject, may we call attention to the case of *Shirk* v. *Lancaster City,* 313 Pa. 158, a case decided in the great state of Pennsylvania in which arose the controversy expressed in the title, *Hunter* v. *Pittsburgh,* 207 U. S., the decision in which case was erroneously interpreted in the *Trenton* case. The Pennsylvania Supreme Court, by unanimous decision, arrives at a conclusion contra to the interpretation given *Hunter* v. *Pittsburgh* in the *Trenton* case. Its conclusion is sufficiently expressed in the title, paragraphs 1, 2 and 3:

"1. Neither the legislature nor the courts can prohibit a municipal water plant from making a profit.

"2. The legislature's control of the property of a municipality acquired in its proprietary or private character is limited; all the property of the municipality of a distinctly private character is protected by the constitutional provision protecting private property of an individual or private corporation, and revenues derived in its private capacity cannot be controlled or taken directly for state purposes even if such revenues are used for public purposes.

"3. Property employed by a municipality in furnishing water to its inhabitants is not used for governmental purposes, and in its ownership and operation the municipality acts in its proprietary character."

May we call attention to the court's discussion of the principles, at pages 162 to 166, inclusive, and its citation of authority for its conclusions.

Before further calling the court's attention to state decisions, may we just emphasize at this point that the Declaration of American Independence contains a great number of abuses of the Crown with which the people of the colonies were keenly familiar. Is it possible that as a result of the revolution against such abuses by the Crown we have now adopted a form of government in America which merely transfers the power to commit such abuses from the Crown of England to the legislatures of the various states? We insist that no such intention appears in the Declaration of Independence or in the early drafts of the American Constitution, nor is such view supported by any citation of authority from Blackstone, the generally accepted authority on the common law as it existed at the time of the adoption of our federal constitution.

A quite good history of early development is contained in "Origin and Growth of the American Constitution," by Hannis Taylor, last published in about 1908. His review of the actual character of the development of the common

law municipal corporation is quite thorough and is singularly devoid of anything that would indicate that we, by the adoption of our constitution, merely changed oppressors.

From the language of the Fourteenth Amendment, we feel this court can be just as frank in discussing the scope of such amendment as Justice Butler was in the *Trenton* case, only, we hope, not as biased. Justice Butler says upon pages 191 and 192 of the *Trenton* case, 262 U. S., in discussing distinction between governmental powers of municipal corporations and those permitted if they occur in a proprietary capacity:

> "The basis of the distinction is difficult to state, and there is no established rule for the determination of what belongs to the one or the other class. It originated with the courts. Generally it is applied to escape difficulties, in order that injustice may not result from the recognition of technical defenses based upon the governmental character of such corporations."

And then he goes on to say flatly they do not apply as against the state in favor of its own municipalities. Why, if the court please, that was the position of the King of England—that he had sovereign powers and that as against such sovereign powers, the people of the colonies had neither legal nor moral right. The colonists enumerated some of the abuses, and there followed revolution. The colonies, forming into states, adopted various constitutional provisions which were intended to, and did, carry with them the principles contended for during the progress and evolution of common law from the Magna Charta to the date of the adoption of those constitutions and the federal constitution.

Nowhere can we find anything which justified a decision of this court saying that a municipal corporation is ex-

cepted from the protection of the Fourteenth Amendment to the Constitution of the United States. Any such conclusion, we respectfully insist, is advanced solely by individual human beings who happen to have written, or are writing, judicial decisions, as so frankly admitted by Justice Butler as to distinctions between governmental activities and those with reference to the property of municipal corporations.

To respectfully point out how human beings may differ in their pronouncements, may we call attention to the decision of the Supreme Court of Minnesota in this case citing only the *Trenton* case and a school district case in Minnesota, by citing other pronouncements of the Minnesota Supreme Court. These cases, of course, do not control this court in interpreting the Fourteenth Amendment, and yet the Fourteenth Amendment in terms is generally the same as constitutions of the states as to civil rights and due process; and they are interesting as indicating the mental conclusions of other human beings acting in their judicial capacity. May we call attention to the following language in *State* v. *Bruce*, 50 Minn. 491, 494-495:

> "The question presented is the constitutionality of the act of 1891. This involves a consideration of the power of the legislature to control, dispose of, and summarily deprive a municipal corporation of the funds which it has already acquired by lawful means and for legitimate purposes, the inevitable result of such legislation being further and increased taxation of the people, that the funds thus diverted and disposed of may be restored and replaced in the municipal treasury. The validity of legislation of this same general character is not altogether a new question in this court, and while it has heretofore been admitted that the legislative control and power over towns, cities and counties, and consequently over their property and funds, is very great, it has not by any means

been conceded that this control and power are without limit, or so transcendent that the lawmakers may arbitrarily take away the private property of a municipality, or, at will, appropriate or direct to be used its lawfully acquired private funds to liquidate a claim which it did not owe in any just sense, and was not morally or equitably bound to pay. It was well said in State v. Foley, 30 Minn. 350 * * * that a legislative enactment that the property of a county, acquired and held by it for its own general benefit, shall be gratuitously bestowed upon any person or class of persons is not legislation, but has been defined as a decree under legislative forms. If, then, the payment provided for be a pure gratuity—a taking of money of the municipality in order that it may be given to a private person—the legislation which requires it cannot be upheld."

See, also:

Deering Co. v. *Peterson,* 75 Minn. 118, 124;
Minnesota Sugar Co. v. *Iverson,* 91 Minn. 30, and cases cited therein;
State v. *Foley,* 30 Minn. 350;
Behrens v. *City of Minneapolis,* 199 Minn. 363.

Lack of uniformity of taxation has been held to be in violation of the equal protection clause of the 14th Amendment of the Federal Constitution.

Sioux City v. *Dakota County,* 260 U. S. 441, 445.

The *Sioux City Bridge Company* case, 260 U. S. 441, above cited, emphasizes what we consider the absurdity of the distinction made in the *Trenton* case. That court clearly holds, at page 445, that:

"The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the states jurisdiction against intentional and arbitrary discrimination, whether occasioned by ex-

> press terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property. (Citing authority)"

Here, again, this court says that an individual has the protection of the Fourteenth Amendment. Is it possible that the 490,000 people of the City of Minneapolis have no such protection? Is any such exception expressed in, or can it be implied, from the provisions of the Fourteenth Amendment?

We insist that the court, in *State* v. *Bruce,* 50 Minn. 491, above cited, more clearly expressed than the *Trenton* case and the decision of the Minnesota court in this case, a correct attitude towards arbitrary action. We repeat the Minnesota court language:

> "It was well said in State v. Foley, 30 Minn. 350 * * * that a legislative enactment that the property of a county, acquired and held by it for its own general benefit, shall be gratuitously bestowed upon any person or class of persons is not legislation, but has been defined as a decree under legislative forms."

That was our conclusion as to the acts of the Crown at the time of the writing of the Declaration of Independence, and we again respectfully insist that there is no evidence anywhere that we, by the adoption of the Constitution of the United States and the Fourteenth Amendment, again expressing in broad terms civil rights and the protection of the people against actions of the states, ever intended to exempt from the protection of the Fourteenth Amendment the people residing in municipal corporations in the United States.

We note that counsel for appellees cites *Coleman* v. *Miller*, 307 U. S. 433, as supporting the *Trenton* case. Hasty reading by us does not move a conclusion that this case is any nearer to the question here discussed than the *Trenton* case was to *Hunter* v. *Pittsburgh*. With all due respect for human beings who write judicial decisions, we have often pointed out how precedent is first established, then a second decision is based on the first, a third on the second, and a fourth on the third, until the final discussion bears no more relation to the original problem than the product of a carpenter created by such method does in cutting rafters for a building. A carpenter cuts a rafter according to measurement and marks the rafter and saws it. Then some carpenters cut the second rafter by using the first, a third by using the second rafter, a fourth by using the third rafter, and so on up until the end of the building; and when the carpenter gets through cutting rafters, the last rafter is sometimes an inch longer than the first.

We respectfully suggest that the citation of cases following and erroneously based upon *Hunter* v. *Pittsburgh* bear about the same deviations. We respectfully suggest that these cases cited by counsel for appellees to support the conclusion of the Minnesota Supreme Court are but hasty adventures in metaphysics. We prefer to treat due process of law as expressed in the Fourteenth Amendment in the same manner as such phrase is treated in various state constitutions, as it is treated in the magnificent discussion of Webster before the court in the Dartmouth College case, and as it is treated in common law discussions from the Magna Charta to the adoption of the Constitution of the United States, drawing much inspiration from Blackstone.

May we just call attention to another startling thing to us. A public utility privately owned is generally created

or authorized by act of the legislature, and, in Minnesota, may have as low as three directors. This utility then is a creature of the state, but the effect of the *Trenton* case is that those three people, also inaugurating, constructing and operating a public utility, have the protection of the Fourteenth Amendment, but the City of Minneapolis, a home rule charter city authorized by the constitution of the state, somewhat erroneously said to be the creature of the state, and having 490,000 people, has no such protection. We fail to find anything in the Fourteenth Amendment justifying such distinction.

Respectfully submitted,

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